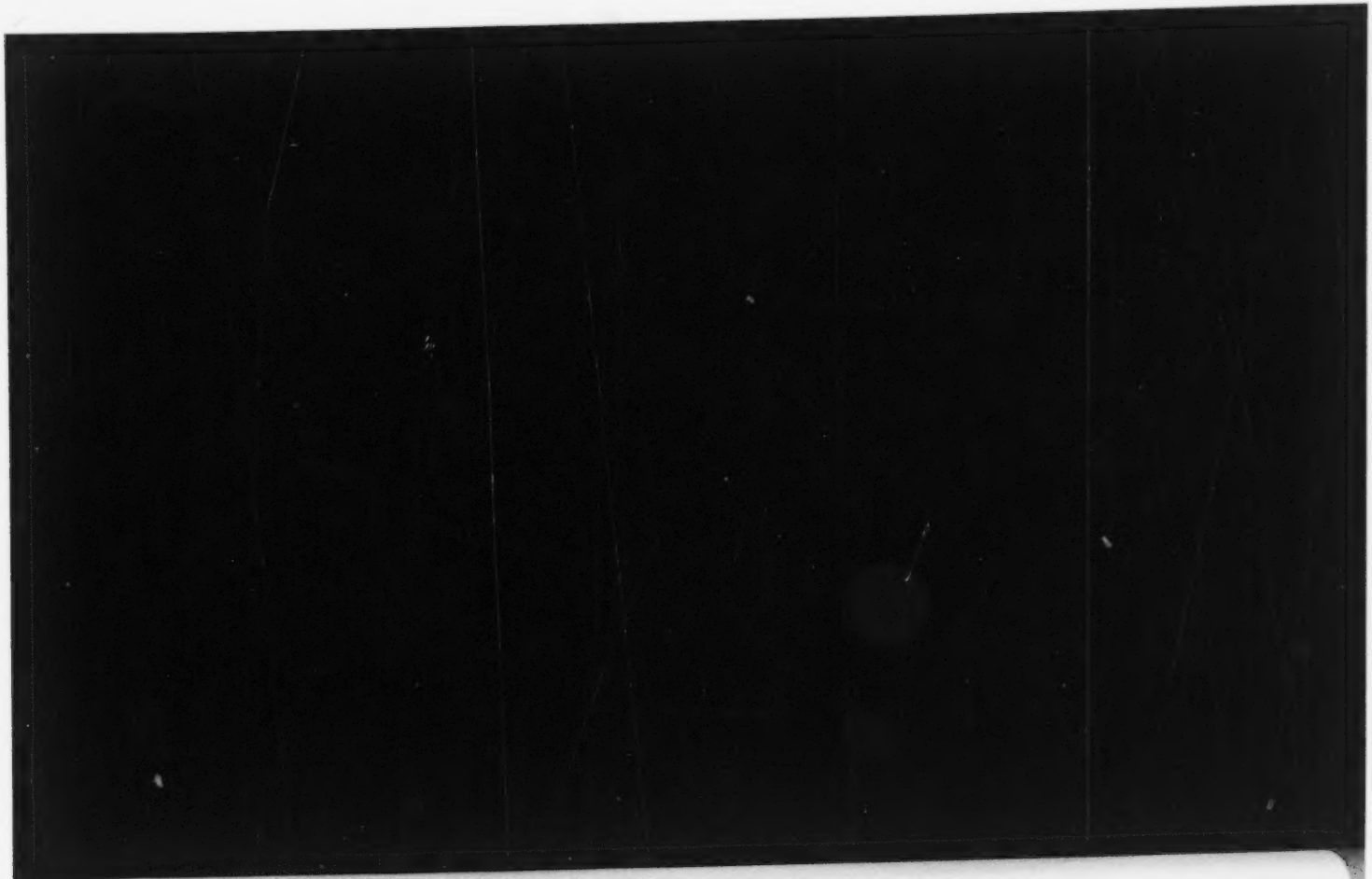

Appendix A

Section 83(f) of the Bankruptcy Act, 11 U.S.C. 403(f):

"(f) If an interlocutory decree confirming the plan is entered as herein provided, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it."

AFFIDAVIT

State of California,
County of Stanislaus.—ss.

AFFIDAVIT OF J. R. MASON IN SUPPORT OF MOTION.

J. R. Mason, being duly sworn, says that he is a creditor of the above entitled petitioner, owning original bonds of said district as shown by his claim herein, that some of said bonds, to-wit, three (3), were due in 1934 and all of which are outstanding and unpaid; that in 1935 a loan was granted the Glenn-Colusa Irrigation District, herein called the district, for the total of $802,500.00, for the liquidation of its outstanding bonds and warrants which amounted to the sum of $1,110,150.00. The plan of composition provided for payment of 54.535 but the district increased this to 69 by applying cash on hand and the proceeds of treasury bonds on hand.

Affiant is informed, and believes, and therefore alleges the fact to be that after the presentation of this plan to the court, the district retired its warrant indebtedness and, in fact, through funds, the source of which is unknown to affiant, paid down its indebtedness to such an extent that it used only $660,943.00 of the R. F. C. loan, and subsequently as affiant is informed and believes, and therefore alleges the fact to be the financial situation became such that the district before delivering any bonds to the R. F. C., pursuant to the plan of composition, had reduced its indebtedness to $425,000.00, and it did subsequently vote a bond issue of 3¼ per cent

bonds in that amount so that the district has received the benefit of the difference between $802,500.00 and $425,000.00, which difference belongs to the creditors and not to the district. Further, affiant says that he is informed and believes, and therefore alleges the fact to be that the district refused to complete the contract with the R. F. C. and offered to, and paid to Nuveen & Co., of Chicago, Illinois, the sum of $12,000.00 for an offer to take the new issue of bonds; that it subsequently developed that Nuveen & Co. did not take the bond issue because counsel advised the necessity of advertising, and that said bonds were placed on the market and purchased by a syndicate composed of Blyth & Co., Inc., Dean Witter & Co., and Stone & Youngberg, at approximately 97.55 for the issue, that the reduced rate of interest and the premium on the sale of the bonds netted the district approximately $27,000.00, which amount also should be paid to the creditors.

That said bonds were subsequently offered to the public and sold to the public at a price as affiant is informed and believes, and therefore alleges the fact to be in excess of 101; that the creditors should have received the benefit of this additional premium.

The consent to the plan of composition herein representing the majority consent thereto, was filed by the Reconstruction Finance Corporation, and that the indebtedness due said Reconstruction Finance Corporation has heretofore been entirely liquidated and there is no consent of any creditor adversely

effected by the plan of composition holding more than three per cent of the indebtedness now valid or present.

That affiant refers to and incorporates herein the offering of the $425,000.00 bond issue by said syndicate, which is hereunto annexed and marked Exhibit "A"; that all of the information and statements referred to in said offering are incorporated herein as the statements of said syndicate but are not vouched for in all details by affiant.

J. R. Mason.

Subscribed and sworn to before me this 31st day of December, 1942.

(Seal) Gilbert Moody,
Notary Public in and for the County of Stanislaus, State of California.

(R. 100.)

Appendix B

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION.

State of California,
City and County of San Francisco.—ss.

J. J. Hankins, being first duly sworn, deposes and says: That he is one of the attorneys for the above named debtor and makes this affidavit on its behalf.

That petitioner prior to the adoption of any plan of composition had paid any warrants that were outstanding and that at the hearing for the confirmation of debtor's plan of composition all warrants were paid and that by the express wording of said plan of composition it was acknowledged that bonds and their appurtenant coupons were only affected. That petitioner was granted a loan by the Reconstruction Finance Corporation in the total sum of $802,500, but that only $660,943 of said loan was needed to have the Reconstruction Finance Corporation acquire 96% of said bonds and coupons. That subsequent to the R.F.C.'s acquisition of said bonds the debtor, by leasing lands and ultimately selling in excess of 65,000 acres of land which had been deeded to the debtor for the non-payment of its assessments, was able to acquire moneys which it used to pay on the indebtedness it owed to the R.F.C. That at the time of the sale of the debtor's refunding bonds, said indebtedness to the R.F.C. had been paid down to $425,000.

At the hearing held for the confirmation of said plan of composition, evidence was introduced showing the land owned by the debtor and rental it had received and expected to receive from said lands and petitioner was given and had this information.

That debtor did not deliver its refunding bonds to the R.F.C., but pursuant to the provisions of the resolution granting debtor the loan, which was introduced into evidence, and with R.F.C.'s consent, sold said bonds upon the open market and paid the R.F.C. loan in cash.

That said J. R. Mason, upon whose affidavit the motion is based, knew of all of the proceedings taken by the debtor, encouraged the same and at various times claimed that he was responsible for the debtor being able to sell its refunding bonds at an interest rate less than 4% and because of his labor in this connection should be paid par and accrued interest for his bonds, although debtor did not request him to exert any effort on behalf of the debtor but actually believes that the refunding bonds were sold in spite of his efforts.

J. J. Hankins.

Subscribed and sworn to before me this 18th day of January, 1943.

(Seal) Henry B. Lister,
Notary Public, in and for the City and County of San Francisco, State of California.

(R. 132.)

Appendix C

[Title of District Court and Cause.]

MEMORANDUM AND ORDER SETTING ASIDE THE SUBMISSION OF THE MATTER OF MAKING AND ENTERING A FINAL DECREE, AND FOR RESUBMISSION AND RECONSIDERATION OF THE MATTER.

On April 13, 1940, an interlocutory decree confirming plan of composition was entered in the above entitled matter under Chapter IX of the Bankruptcy Act.

The plan provided in substance for the retirement of all the outstanding bonded indebtedness of the District in the principal amount of $1,248,453.66 and unpaid interest coupons maturing after January 1, 1934, by cash payments to the bondholders (except on certain—"sub-treasury bonds" in the amount of $174,-800.00), in amounts between $612.91 and $690.07 on thousand dollar bonds, depending on the maturity dates of the bonds and coupons attached; and by cash payments between $18.44 and $20.34 on $30.00 coupons not attached to bonds, depending upon the maturity dates of the coupons. 56.535 cents for each dollar of the principal amount of the bonds was to be obtained from the proceeds of a loan "not to exceed $802,500" to be obtained from the Reconstruction Finance Corporation; the remainder to be paid by the District. The plan further provided that refunding bonds would be issued to the Reconstruction Finance Corporation in a total amount equal to the amounts disbursed from the loan.

The plan was accepted by the Reconstruction Finance Corporation, the then owner of not less than fifty-one per cent of the securities affected (excluding securities owned or controlled by the petitioner).

Objections of certain minority bondholders to the plan of composition were overruled, and an appeal was taken from the interlocutory decree, which was later dismissed by stipulation on the basis of a decision in a similar action rendered subsequent to the date of the appeal.

Thereafter, the debtor filed a petition for a final decree. J. R. Mason, one of the dissenting bondholders, on behalf of himself and other creditors, filed objections to the entry of a final decree.

There appears to be no dispute over the manner in which the composition was carried out. Mr. J. J. Hankins, one of the attorneys for the debtor, alleges in his counter-affidavit:

> "That petitioner was granted a loan by the Reconstruction Finance Corporation in the total sum of $802,500, but that only $660,943 of said loan was needed to have the Reconstruction Finance Corporation acquire 96% of said bonds and coupons. That subsequent to the R.F.C.'s acquisition of said bonds the debtor, by leasing lands and ultimately selling in excess of 65,000 acres of land which had been deeded to the debtor for the non-payment of its assessments, was able to acquire moneys which it used to pay on the indebtedness it owed to the R.F.C. That at the time of the sale of the debtor's refunding bonds,

said indebtedness to the R.F.C. had been paid down to $425,000.

At the hearing held for the confirmation of said plan of composition, evidence was introduced showing the land owned by the debtor and rental it had received and expected to receive from said lands and petitioner was given and had this information.

That debtor did not deliver its refunding bonds to the R.F.C., but pursuant to the provisions of the Resolution granting debtor the loan, which was introduced into evidence, and with R.F.C.'s consent, sold said bonds upon the open market and paid the R.F.C. loan in cash."

Substantially the same facts are alleged in the affidavit in support of the motion, except that Mr. Mason states that the debtor concealed assets which it used to reduce the loan.

The debtor does not deny the allegation of Mr. Mason that it was able to sell a 3¼ percent bond, rather than a 4 percent bond as represented in the proposed composition, resulting in a saving to the District of $27,000; or his allegation that the debtor paid a premium of $12,000 to a Chicago firm to bid on the bonds, and that the bonds were sold to the public by another firm in excess of 101.

Mr. Mason contends that the creditors are entitled to the difference between $425,000, the amount of the R.F.C. loan remaining at the time the refunding bonds were sold, and $802,500, the amount the District was able to borrow from the R.F.C. He also

claims that the creditors should receive in addition the benefit of the saving in interest on the bonds, or $27,000. His theory is that if "a bankrupt can obtain $802,500.00 to pay his creditors they are entitled to that amount".

In *Lorber v. Vista Irrigation District,* 127 F. (2d) 628, in which there was an appeal from an interlocutory decree confirming a plan of composition proposed by the District, the court stated that the trial court should make a finding to support a conclusion that the payments provided for in the plan are all that the District is reasonably able to pay in the circumstances, and remanded the case to the District Court to make the necessary finding.

It would follow that if, in carrying out the proposed plan, the District does not need to pay what it expected to pay and represented itself as able to pay in the plan of composition, it has not paid all that it is "reasonably able to pay in the circumstances".

There is no showing of fraud or misrepresentation on the part of the District, but circumstances developed that enable it to make the pro rata payments provided for and retire and refund its bonded indebtedness for less than it expected to pay and represented that it could pay. The principles of equity are applicable to bankruptcy matters (*American Ins. Co. v. Avon Park,* 311 U.S. 138, 145), and it seems equitable and just that the creditors and not the debtor should have the benefit of this unexpected saving.

In the interlocutory decree the court found that the plan was fair, equitable, and for the best interests of the creditors. This finding must have been based upon a consideration of the financial condition of the District, its assets and liabilities, and the total amount it was able to raise to pay its debts. The pro rata amount then payable to the creditors would come as a result of dividing up this total, in effect, according to the plan, and the fairness of the percentage then payable to the creditors would be considered only incidentally.

If it is equitable for a debtor to raise, and it is able to raise $802,500 to pay its creditors, it may be that they should receive the percentage on their claims that would result from a distribution to them of this amount, and if the proposed plan actually required the borrowing of only $660,943, there would appear to be a deviation from and a substantial modification of the plan approved by the interlocutory decree, and that that plan has not been carried into effect.

The creditors may also be entitled to the saving the District was able to effect by the issuance of 3¼ percent refunding bonds instead of 4 percent bonds as represented in the proposed plan.

With regard to the sale of property by the District which enabled it to pay the R.F.C. loan down to $425,000 prior to the issuance of the refunding bonds, the question of whether the bondholders are entitled to a credit in the amount of the proceeds of such sale would probably depend upon whether the existence of such assets was revealed to the court at

the time the interlocutory decree was made. If the court knew of these assets it would seem to amount only to a matter of bookkeeping whether the creditors were paid through the sale of the assets or by money borrowed on such assets.

The debtor relies on Section 83 (F) of the Bankruptcy Law, as conclusively determining its right to a final decree. That section provides:

> "If any interlocutory decree confirming the plan is entered as herein provided, the plan and said decree confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree * * *."

It states that the only question is whether the funds provided for in the plan of composition were deposited with the disbursing agent.

The consideration which the court found fair and equitable and which the District represented that it was able to pay was not delivered to the creditors. While they received the percentage of their claims provided for in the plan, it developed that they may have been entitled to a higher percentage of the consideration offered by the District. No complexities of financing the plan should alter the situation. The pro-

vision of the Bankruptcy law cited by the debtor would therefore be inapplicable. It is therefore

ORDERED:

1. The motion to set aside the submission of the matter of making and entering a final decree, and for resubmission and reconsideration of the matter is granted.

2. The petition for final decree is denied without prejudice.

A. F. St. Sure,
United States District Judge.

February 23, 1943.

(Endorsed): Filed Feb. 24, 1943.
(R. 142.)

Appendix D

In the Southern Division of the United States District Court for the Northern District of California

In the Matter of GLENN-COLUSA IRRIGATION DISTRICT, Debtor.	No. 29,763-L

MEMORANDUM AND ORDER DENYING PETITION FOR FINAL DECREE.

The Debtor filed a petition for final decree in the above proceeding, and the matter was taken under submission. Certain of the creditors filed objections to the entry of a final decree and moved for a resubmission and reconsideration of the matter. On February 24, 1943, this court made an order setting aside the submission and for a resubmission and reconsideration of the matter, stating its reasons in the memorandum accompanying the order. Further hearing was had, the matter resubmitted, and the debtor and dissenting creditors have filed additional affidavits and points and authorities.

No new evidence or points of law have been presented to the court on the rehearing and resubmission which would alter its opinion as stated in said memorandum. Reference is made particularly to the following paragraph, page 5 of the memorandum:

"If it is equitable for a debtor to raise, and it is able to raise, $802,500 to pay its creditors, it may be that they should receive the percentage on their claims that would result from a distribution to them of this amount, and if the proposed plan actually required the borrowing of only $660,943, there would appear to be a deviation from and a substantial modification of the plan approved by the interlocutory decree, and that the plan has not been carried into effect."

It is therefore

ORDERED:

The petition for final decree is denied.

Dated, June 2, 1943.

A. F. St. Sure,
United States District Judge.

Original filed Jun. 2, 1943 with Clerk, U. S. Dist. Court, San Francisco.

(R. 294.)